

**Remnants and Revenants:
Politics and Violence in the work of Agamben and Derrida**

1 Introduction

Giorgio Agamben's idea of the *remnant* is one answer to the question what a non-statal and non-juridical politics of human life might mean - a politics beyond the violence of law, sovereignty, representation. The remnant (*quel che resta*), or that which remains, is disruptive and destabilising of established present states of affairs and processes. It offers an elusive possibility of escape from the violence of the modern state. Jacques Derrida's idea of the *revenant* - the ghost or specter which comes back, destabilising any settled idea of the 'present' - promises a future which is open. Despite this possible open future, we cannot go beyond violence. We can engage in a contaminated, spectral politics of lesser violence.

In this paper we analyse the implications of these contrasting responses to the question of political possibility. Our major background concern is the significant question: can there be politics without violence? This key question, in our understanding of contemporary political theory, is more often evaded than posed or answered.¹ Among contributors to political thought Derrida and Agamben are two for whom the problem of a possible politics without violence is avowedly central. For both, reading Walter Benjamin's 'Critique of Violence' is the occasion for focus on the relationship between violence and politics, including future politics. We argue that Derrida poses and responds to the question of the meaning and relation of politics and violence more persuasively than

does Agamben. We also argue, however, that Derrida's argument is flawed by abstraction and formalism. In the end, neither thinker provides us with the resources to think *politically* about the future politics that is promised in their work.

2. Walter Benjamin: Critique, Violence and Time

Benjamin's 'Critique of Violence' was first published in 1921.² In engaging in a 'critique' of violence, Benjamin's aim is to establish grounds on which to discriminate between different types or meanings of violence, and on which to evaluate violence as a political phenomenon. He rejects the possibility of using 'ends' (the purposes that violence may serve) as the standpoint for such critique, because this would not give 'a criterion for violence itself as a principle'. He is interested in discriminating 'within the sphere of means themselves' (Benjamin 1978: 277).

Benjamin is clear that there is nothing intrinsic to the 'deed' that makes it into one of violence. Nature or accident can involve physical violation. Violence, however, is a normative category. Its normativity, furthermore, is intrinsically connected to the normativity of law. He begins his critique by examining the contrast between natural and positive law. Theses of natural law, he argues, focus on the justifiability of ends as the key to the justifiability of violent means. (Benjamin 1978: 278) Theses of positive law focus on the legality of means. This is what determines the legitimacy of the violence in question. (Benjamin 1978: 279-80). Ultimately, Benjamin argues, both of these legitimations of violence amount to two sides of the same coin. Whether law is conceived as natural or positive, violence must be either 'law-making' or 'law-preserving' if it is to claim validity. (Benjamin 1978: 287). These two kinds of violence are mutually dependent. They are equally problematic insofar as law itself is problematic. (Benjamin 1978: 287).

In particular, all law is bound up with violence. A peacefully struck contract is premised on a power of violent origin, and confers on both parties a right to some form of violence in the case that the agreement is broken. (Benjamin 1978: 288). Institutions of punishment (285-6), military power and law (283-5), social rights (such as the right to strike) (281-83), parliamentarianism (288-9), police (286-7), (as well as contract), all embody an unhappy dialectic between law-making and law-preserving violences, one or the other of which will often be denied, both of which will be 'spectrally' (286, 287) present. All private (non-state) uses of violence threaten existing law and thereby provoke law-preserving violence.

Non-violence is possible only in spheres beyond the sovereign state. 'Unalloyed means of agreement' are possible - visible in private relationships (289), the negotiations of diplomats in inter-state anarchy (292-3), and the agreement, in general, on which language rests.(289). However, such mechanisms of conflict resolution have been increasingly squeezed out by the self-perpetuating tension and mutual dependence between law-making and law-preserving violence. Even linguistic meaning itself is now 'penetrated by legal violence in the penalty placed on fraud.' (289) Because even 'unalloyed agreement' based on courtesy, sympathy, peacableness and trust are determined, in their objective manifestation, by law, non-violence can operate only indirectly, and only in relation to matters concerning objects - not to 'the resolution of conflict between man and man'.(289) Accordingly, it becomes difficult to see how there could be change in the world constituted by law if 'violence is totally excluded in principle'.(293)

In the latter part of the essay, Benjamin examines the possibility of a violence that is neither law-making nor law-preserving. There might be a violence which, although it might *be* the (justified or unjustified) means for an end, is not related to that end *as* its

means. (293) This possibility is consistent with the obvious nature of violence not as means at all, but as manifestation - which can quite properly be subjected to criticism.(294)

Benjamin examines two possible categories of non-mediate violence. First is mythical violence, which Benjamin identifies in Greek myths in which the gods are directly manifest to humans.(294) But it turns out that the immediacy here is deceptive. Mythic violence is essentially a form of power and is inextricably entwined with law-making. It therefore does not escape the ongoing dialectical relation between law-making and law-preserving violence.(295-6) In contrast to the 'perniciousness' of mythical, Benjamin introduces divine violence. (297) This is law destroying, boundary destroying, breaking the cycle of law making and law preservation.(300) Mythical violence is bound up with guilt and retribution, with 'mere life', and is bloody. Divine violence is expiatory (not punishing), is involved with living (not mere life), it might annihilate but it does so without bloodshed. (297-8)

Divine violence is attested to by religious tradition - Benjamin's references are biblical.(297) But it is also manifested and sanctioned in everyday life, in the power to educate. In its perfected form education is outside law.(297) It may manifest in 'true war', or even in judgement, but we cannot in the event know this. And we must not confuse it with war, or with punishment, (let alone with legislation). Mythical violence will be recognisable to men; divine violence not, 'because the expiatory power of [divine] violence is not visible to men.'(300). The violence that stands wholly outside of the project of founding or preserving state power, but which also cannot be known for what it is from a human standpoint, is the promise of a different (unknowable and unspecifiable) kind of future (300).

Benjamin's text can be interpreted in a variety of ways. For the purposes of this paper, two aspects are particularly significant. First is Benjamin's view of modern state

power, which is connected with a distinction between law and justice. Benjamin identifies the modern state with an ever-expanding sphere of law, which originates in and is perpetuated by violence. A range of social and political institutions embody a mutually contaminating mixture of lawmaking and law-preserving violence. For example, the police's presence is particularly destructive in democratic contexts where the sovereignty they embody and extend is amorphously located and unaccountable.(287). Benjamin's essay focusses not just on direct violation of bodies, but also the 'brutal encumbrance' of ongoing surveillance and regulation of everyday life (287). The ever-increasing scope of law, rather than eliminating violence from political relations, embeds it ever more deeply. Because all attempts to change things that depend on the articulation of a new law simply perpetuate the same logic, and because violence is nevertheless needed to challenge law, any genuine progress rests on the possibility of a violence that is neither law-making nor law-preserving. Divine violence, by contrast, is about justice, with no ongoing blackmail of threat, guilt and punishment. As violence it is 'lethal', but it does not set up or perpetuate a regime of violence. It is 'miraculous', in the sense that it cannot be accounted for in terms of either origins or ends, even if in retrospect it may be recognised as revolutionary in its effects. Justice, as opposed to law, is identified by Benjamin with exemplary (pure and immediate) action that is inspiring but not legislating.[295]

Second, the distinction between law and justice is related to critique of any kind of justification for the use of violence that relies on the idea that the future, and hence an instrumental relation between the past and future, can be known. Benjamin's critique of violence is simultaneously a critique of philosophies of history that legitimate violence in the name of a new order. Constitutional liberal polities dissimulate the law-making and law-preserving violence on which they rely; revolutionaries are caught in the same dialectic when they assume that they know the end of history and the mechanisms of

progress. The concept of divine violence is thus intimately related to the idea of revolutionary 'messianic' time in another of Benjamin's texts, *Theses on the Philosophy of History* (Benjamin 1999).³ Here he develops an explicit critique of the historicism of certain modes of revolutionary thought. According to historicists, on Benjamin's account, all violence experienced and challenged by actors in the past is understood as functionally necessary in relation to the forces carrying history forward. The effect of this, Benjamin argues, is to silence the voices of the oppressed and encourage complicity with oppressors, all, supposedly, in the service of progress. This kind of 'victor's history' perpetuates rather than interrupts the conditions of oppression. (Theses VII, VIII). Benjamin argues that revolutionary change depends not on the sacrifice of the past to the present, but on the capacity to break open victor's history, to 'fight for the oppressed past'. (Thesis XVII) This happens, he argues, in moments of messianic time.

'Messianic' here signals a particular relationship between past, present and future. Because present generations were expected on earth, there is an 'agreement' between past and present generations, and present generations have a weak messianic power to which the past has a claim. (Thesis II) Historical continuity, in particular the historicist tendency to gloss over past suffering in the name of present progress, is radically disrupted by these claims. There is a parallel with divine violence which also radically disrupts social, legal and political continuity, and in particular the legal trade off of suffering for order, with the manifestation of law destroying violence. The claim of messianism on us is that we must achieve the right kind of historical consciousness. (Thesis VI). We must also attend to the now (Jetztzeit) (Thesis XIV) not in relation to a smooth past, nor to an empty future, 'for every second is a strait gate through which the Messiah may enter'. (Thesis B) The alternative order that follows on this dramatic moment, whether that which results from divine violence, or that discernable by the historical materialist who 'recognises the sign of

a Messianic cessation of happening' (Thesis XVII), cannot be straightforwardly represented. It is expressed and exemplified by reference to religious tradition.

3. Giorgio Agamben: Politics Beyond Lawmaking and Law-Preserving Violence

The source for Agamben's idea of 'remnant' is Paul's *Letter to the Romans* from the Christian New Testament, a quote from which forms an epigram for *Remnants of Auschwitz*:

Even so at this present time there is a remnant according to the election of grace ...
And so all Israel shall be saved. (*Romans* ch 11 vv 5,26).

The remnant is important in light of the overwhelming power of state, church and law - all the forces that condemn rather than save. To set against this, we have only the weak messianic power of our capacity to set word against law, the nonjuridical against the juridical. This is a power that is weak not because it is ineffective but because it is entirely non-cumulative, a 'remnant of potentiality'. The idea of the remnant is developed most fully in *The Time that Remains* (2005b fp 2000) which analyses *Romans*.⁴ It echoes equally messianic characterisations of moment of radical interruption of the dominant order in earlier works such as *Infancy and History* (1993).

Throughout Agamben's work Benjamin's themes and insights are a source and an inspiration. (eg Agamben 1993 fp 1978: 91, 102). He engages directly and critically with the 'Critique of Violence' and 'Theses on the Philosophy of History' in *Homo Sacer* (1998 fp 1995), and *State of Exception* (2005 fp 2003). Agamben's narrative of the reduction of all contemporary political life to the violence of the exception is indebted to Benjamin's thesis that 'the state of emergency in which we live is not the exception but the rule' (Benjamin 1999: Thesis VIII; see Agamben 1993: 102). It can be interpreted as a development of Benjamin's account of mythical (lawmaking) violence as 'bloody power

over mere life for its own sake' (Benjamin 1978: 297; Agamben 1998: 65-66). His critique of modern political thought follows Benjamin's both in terms of his diagnosis of the ever-encroaching violence of law and in his articulation of a possible alternative conception of politics, beyond law and beyond historicism. Agamben's argument for the need for an opening into such a '*nonstatal and nonjuridical* politics and human life' (Agamben 2000: 112) draws on Benjamin's arguments about violence and history.⁵

The idea of 'mere' or 'bare' life is central to Agamben's analysis of the subsumption of politics under violence in the contemporary world. In the classical polis *zoē* (simple, natural life, shared by animals and humans) is excluded from the realm of politics proper, and is confined to the private realm of the household. It is clearly distinguished from *bios*, 'the form or way of living proper to an individual or a group' (1998:1), which takes place in the public sphere. The classical polis depends on marking the distinctions between these two different realms of existence. In contrast, in the modern state, the realm of *zoē* becomes increasingly politicised and its distinction from *bios* disappears from view. Instead, politics becomes bio-politics, devoted to the production and preservation of natural life. The result of this is twofold. On the one hand there is a proliferation of technologies through which individuals are produced as 'docile bodies'. On the other hand, there is a massive increase in the power of the state to control all aspects of human existence.(Agamben 1998: 4-5)

In accounting for the nature of sovereign power, Agamben utilises two figures: the sovereign authority whose right to decide on the exception underpins law (Agamben 1998:26) and *homo sacer* (Agamben 1998: 81-83). *Homo sacer* is the figure who, in Roman law, marks the boundary between political and natural life as a being that may not be sacrificed but may be killed. What is important about both of these figures is how both represent zones of indistinction between what lies inside and outside of the polis. The

sovereign power of exception is both law and not law; *homo sacer* is both included and excluded from both nature and politics, his life is 'bare life', not even the simple, natural life of *zoē*. There is a symmetrical relation between sovereignty and the bare life of *homo sacer*. (Agamben 1998:84) This, Agamben argues, is fundamental to all sovereign power. Whatever the specific form taken by polis or state, all law is taken to depend on constitutive (lawmaking) violence. In the modern state, however, the moment of inclusive exclusion, which in the classical polis confirmed and protected the distinction between political and natural life through the production of bare life, has become more than a moment of exception. This is because the dependence of the exercise of sovereign power on its inclusive exclusion of life has shifted from the margin to the centre of politics.

This follows the growing importance, since the seventeenth century, of the needs and interests of whole populations to the perpetuation of state power. This has been accompanied by the discourse of 'rights of man' that seeks to challenge but actually reinforces new biopolitical forms of sovereign power (Agamben 1998: 121). Within the modern state, all citizens can be said 'in a specific but extremely real sense, to appear virtually as *homines sacri*' (Agamben 1998:111). In other words, the moment of exception, in which politics is constituted through sovereign exclusion of life, has become the predominant mode in which politics is conducted. It is for this reason that Agamben sees the camp as the 'biopolitical paradigm of the modern'. The concentration camp and the refugee camp are both absolutely biopolitical spaces, that is to say that they are both wholly spaces of exception which operate in a zone of indistinction between politics and life, and mark the boundaries between inside and outside of political community (Agamben 1998:123; 134). The fact that the former is the product of totalitarian politics and ideology while the latter is the outcome of 'humanitarianism' does not matter. Although Agamben acknowledges differences between democratic and authoritarian states,

and between fascist and liberal ideologies, insofar as both make life central to politics, both reproduce the original constitutive violence of sovereignty (Agamben 1998:10-11).

Biopolitics becomes the micro-management of individual lives and deaths in developments like the legalization of euthanasia. At all levels, biopolitics degenerates into 'thanatopolitics' (Agamben 1998:122).

Drawing on Benjamin's arguments about violence and history, Agamben identifies an alternative, *geniune* politics in 'the sphere of a pure mediality without end intended as the field of human action and human thought' (Agamben 2000: 115-6). The problem is how to find the way, the opening, to this other kind of politics. In *Letter to the Romans* Paul writes about a time in which the end of both history and state power are immanent. It is this same kind of time, Agamben argues, that is at issue in Benjamin's notion of 'messianic time'.⁶ For Agamben, it is by re-connecting with the experience of messianic time in both Paul and Benjamin that the opening into nonstatal and nonjuridical politics may become possible. (Agamben 2005b: 25)

Agamben tries to capture the meaning of the experience of this kind of time in terms of the modality of 'exigency'. In unpacking this concept, he echoes Benjamin's critique of victors' history in *Theses on the Philosophy of History*. Benjamin argues that the task of the historical materialist is to identify those moments in the past that call the present into question, and fuse with the present in a construction of history in which time comes to a standstill. (Benjamin 1999: Theses XVII, A, 254-5) Agamben calls for us similarly to relate present to past. For Agamben, this means an acknowledgement in the present of responsibility to the exigency of the 'forgotten', all of the moments that will never be remembered because they are not part of victors' history. This responsibility is not about writing alternative subaltern histories, but about recognising the dependence of

the present on the forgotten past, and therefore the existence of an ongoing claim of the past upon the present (Agamben 2005b: 40-41).

Within messianic time, all things and all subjects are called into question (Agamben 2005b: 42). The redemption of what has been involves the undoing of the present in relation to the past, which means the undoing of the conditions that made the past possible. But if messianic time undoes all things and all subjects, it nevertheless does have a quasi-subject - the remnant. According to Paul, the remnant is what is saved, but the prophets, and Paul, address all the people - all shall be saved. (Agamben 2005b: 162-3) In his interpretation of Paul's account of the body of the elect, Agamben argues that its defining characteristic is non-identity. He concludes this on the basis of Paul's characterisation of the Christian as the non-coincidence of both Jews and non-Jews with themselves as Jews or non-Jews in terms of flesh and spirit (Agamben 2005b: 51; *Romans* ch 9 vv.4-8 check). Impossibility of identity is key to the meaning of 'the people' as a political actor. This should not be understood as it is in traditional democratic theory, as universality, majority or minority, but as the 'figure assumed in decisive moments'. (Agamben 2005b:57) The politics of the remnant is unrepresentable; in this it is like Benjamin's divine violence. It is captured principally in its radical difference from the violent politics of law and the state.

Paul's exposition of messianic time as a 'now' time, in which the past is comprehensively undone, also begs the question of the relation between this 'now' time and the law. Agamben claims that what is at stake in Paul's argument is not the setting of 'non-law' against 'law' but rather 'setting a non-normative figure of the law against the normative figure of the law' (Agamben 2005b: 95; *Romans* ch 7 check). Agamben argues that Paul means not that traditional law is simply abolished, but that it is deactivated or suspended, yet simultaneously fulfilled in the law of faith. The messianic relation between

faith and law is one in which faith both deactivates and fulfils law. This conclusion leads Agamben back to his earlier analysis of sovereign power and the state of exception.

(Agamben 2005b: 104, 106-7)

Paul's radicalisation of the state of exception, by absolutizing the deactivation of the law of the commandments, according to Agamben, essentially exposes the illegitimacy of all legal powers in messianic time. Agamben reads Paul through lenses provided by Benjamin, as exposing the unjustifiability of sovereign power as such (Agamben 2005b: 111; see also Benjamin Thesis VI). Nevertheless, this does not mean that messianic time transcends law. Faith (religion) and commandment (politics) are not two 'heterogeneous' elements, but both are elements of law. The suspension of commandment (politics, law) as norm and the confession of faith have two different kinds of potential. They might become the ground of normative law (resuming the dialectic between law-making and law-preserving violence) or they are taken as instances of pure experience of the world (in which case the world is opened up as a 'space for gratuitousness and use'. (Agamben 2005b: 1325) Agamben suggests that we can interpret the history of both church and human society in terms of a 'dialectic' between these two tendencies. He also argues that it is always the case historically ('and seems to be happening again today') that the second tendency falls to the wayside, leaving only an atrophied normative law in the sovereign power of the state and in the dogma of the church (Agamben 2005b: 135). In response, there is only weak messianic power, the 'remnant of potentiality'.

4. Derrida: Politics of the Lesser Violence

There is an element of messianism in Derrida's political thought. But it is a messianism that is not about fulfilment, now or in the future, rather it is a messianism of temporal dislocation, haunting and promise.

It is a proper characteristic of the spectre, if there is any, that no one can be sure if by returning it testifies to a living past or to a living future, for the *revenant* may already mark the promised return of living being. Once again untimeliness and disadjustment of the contemporary. (Derrida 1994: 123)

In this section we begin by tracing the theme of violence generally in Derrida's philosophy, concentrating on papers in *Writing and Difference* (1978) and *Of Grammatology* (1976). We then go on to his explicit interpretation and criticism of Benjamin in 'The Force of Law' (1992), and to his idea of the politics of the revenant in *Spectres of Marx*.⁷

Derrida argues that any use of language depends on a primary violence that obliterates 'the proper', in the sense of the singularity of any specific subject, object or act. For instance, in order to be meaningful within language, the uniqueness of what the proper name is intended to invoke is destroyed by its dependence on the previously established significance of particular letters and sounds, that in turn depend on a set of rules and relationships that reduce the unique to a common pattern of differentiation, and therefore always to something that we have heard before, a repetition. Even where there is no written form of language, the distinction between writing and language can only be sustained through a denial (itself violent) of the dependence of speech on writing. (For example, Derrida 1976: 120). This highly formalised conception of violence identifies violence with the violation of the singular necessary to any common system of meaning, but also to the dissimulation of this violence in supposedly 'scientific', objective analyses of language and culture.⁸

In 'The Violence of the Letter' (in Derrida 1996), engaging with Levi-Strauss's work, Derrida elaborates on the distinction and connection between three levels of violence which are bound up with the priority of writing over speech. The 'tertiary structure of violence' comprises, first, originary ('arche') violence, which is the violence of the transformation of singularity into particularity in language (the priority of writing); second,

the 'reparatory' violence of law, which suppresses arch-violence, and formulates universal rules that make sense of particular claims and actions in relation to general truths, thereby regulating what is permissible and what isn't within political communities; third and finally the violence of reflection, which constitutes the empirical possibility of the transgression of law (the second violence).⁹ The violence of reflection challenges the reparatory violence of law by revealing the arche-violence that law both requires and suppresses (Derrida 1976: 112-3).

Beyond structuralist linguistics and social anthropology, Derrida finds in Western metaphysics the same pattern of thinking that disguises its own violence. In the case of phenomenology (Husserl) and ontology (Heidegger), which set themselves against structuralist approaches, and claim to articulate the meaning of objects as they appear or disclose themselves, Derrida argues that, at bottom, both share the same violent structure in which difference is reduced to what he terms 'the totalitarianism of the same' (Derrida 1978 fp 1964:113). Derrida's critical engagement with Levinas is more sympathetic in that he reads Levinas as aiming to avoid the originary violence of subsumption in which Western metaphysics in general is caught. Nevertheless, Derrida ends up accusing Levinas of falling into the trap of 'originary violence' himself in failing to acknowledge the mutual implication of the ongoing violence of discourse and its supposedly non-violent condition of possibility in the 'mute glance' (Derrida 1978 fp 1964: 130). It appears, therefore, that we are caught, whether we like it or not, in an 'economy of violence', also referred to as 'economy of war', (Derrida 1978 fp 1964: 185), in which each attempt to evade the violence of logos also always enacts it. (Derrida 1978 fp 1964:156)

What, then, do Derrida's analyses of structuralism and metaphysics tell us about his understanding of violence in relation to politics? First, in relation to the meaning of violence itself, Derrida's key claim is that violence is the forcible violation of singularity

(integral and unique), in which beings and actions are deprived of the singularity proper to them and transformed into particular instances of a general category or rule. This forcible violation of singularity is, according to Derrida, presupposed in all language and meaningful social and political practice, including politics. Second, although Derrida's concept of violence does not necessarily imply phenomenal violence, he clearly sees arche-violence as fundamental to both the reparatory violence of law and the transgressive violence of reflection. Third, Derrida suggests that there is no possibility of breaking out of the tertiary structure of violence.

In his treatment of Levinas, however, Derrida suggests that it may be possible, once we have recognised, and ceased to dissimulate (disavow) the tertiary structure of violence in which we are caught, to discriminate between 'worst' (original) and 'lesser' (secondary) violence. (Derrida 1978 fp 1968: 162) Derrida's critical engagement with Levinas prefigures his argument about law and his reading of Benjamin in 'Force of Law: the mystical foundation of authority'. In this text, Derrida begins by asking, what is the difference between the force of law and 'violence deemed unjust'? – and notes that *Gewalt* is the word used for both legitimate force and illegitimate violence in German. The discussion that follows sets out to problematise the distinction between legitimate force and unjust violence by locating violence both in law's institution or inauguration (which cannot itself be categorised as legal or illegal, just or unjust) and in the moment of 'decision' or 'interpretation' in which law is applied – 'interpretive violence' (Derrida 1992: 13). This distinction is reminiscent of that between Benjamin's lawmaking and law-preserving violence.

This location of violence in law echoes the argument about 'originary' violence in relation to language. Derrida's claim is that the only way universal rules can be applied in the regulation of human conduct is through a prior violation of singularity, in order that all

actions can be interpreted as particular instances of a general category. This arche-violence is inherent in the constitution of law itself. It institutes exclusive divisions between those to whom distinctions between legitimate force and unjust violence apply and those to whom they do not. (Derrida 1992: 18) Derrida points out that there are still many 'subjects' not counted as subjects who 'receive this animal treatment' in relation to the law.

Derrida's argument suggests that the violence inherent in the ongoing operation of legality is always exceeded by an original violence that enables law but cannot be captured in its terms – an unintelligible, 'mystical' foundation of law. In addition, he claims that this original, unintelligible violence is also constantly repeated in the moment of adjudication in which the subsumption of a particular case under a category of law is decided by the judge. Ultimately, there is no law for law, which means that the legitimacy of law's foundation cannot be judged determinately (in relation to universal principles). In the case of arguments that would ground positive law in natural law, Derrida argues, the same pattern is repeated, since natural law also requires the prior violence of the reduction of singularity to particularity – or of difference to sameness.

It is at this point in the argument that Derrida introduces the concept of 'justice' in contrast to law and makes a connection between justice, violence, deconstruction and law. In his initial discussion, the domain of law, once it is constituted, is one of rules and calculation. Justice, on the other hand is 'infinite, incalculable, rebellious to rule and foreign to symmetry, heterogeneous and heterotropic' (Derrida 1992: 22). Whereas law is addressed to the particular as an instance of the general, justice, according to Derrida, is addressed to the singular – even when it is expressed in universal terms. The aspiration of justice is to do justice to singularity, to respect not 'the' person but 'this' person, not 'the' case' but 'this' case, whether this is articulated in terms of 'desert' or 'rights'. Thus far, Derrida suggests, his own argument resembles that of Levinas, who sees the meaning of

justice as bound up with the radically asymmetrical relation of obligation between self and other, rather than in relations based on equity and symmetry (Derrida 1992: 22). There are also clearly echoes of Benjamin in the distinction Derrida draws between justice and law. However, Derrida's argument does not stop with the contrast between justice and law. Law claims to exercise itself in the name of justice, and justice is required to establish itself in the name of enforceable law. (Derrida 1992: 22)

The interrelation between law and justice sets up a series of problems for both. Justice (addressed to singularity) is, literally, what is suppressed by law, not contingently but as a necessary aspect of what law is. Yet the only way of delivering justice is through the medium of law. At the same time, the orientation of justice to singularity is also the possibility of the deconstruction of law. So it is ambiguously related to the violence that grounds law. Justice deconstructs law because it puts both the foundation ('the institutive act of a constitution that establishes what one calls in French *l'état de droit*') (Derrida 1992: 24) and interpretation (the judge's decision) of law into question, pointing to the ways in which law cannot account for itself in terms of law (Derrida 1992: 22-26). Justice in this sense disrupts any given ruling order by perpetually pointing us to the ways in which any application of law will fail to do justice to the uniqueness of every case.

Justice is ambiguously related to the violence that grounds law in two respects. First, because every grounding of law is a response to law's failure to do justice within a given existing constitutional or juridical framework. This means that justice is always in danger of becoming violence in the form of a new originary institution of law. Second, because it is addressed to singularity and is therefore both unintelligible and impossible in the same way as is the extra-legal moment of foundation or decision through which law is constituted. It seems therefore as if justice is 'terrifying' in the same way as is the 'undecipherable' event that originates (or 'decision' that perpetuates) legal order.

Derrida's analysis of the distinction and mutual implication of justice and law generates twin anxieties: first, about the potentially crippling effects on political engagement of an idea of justice beyond law and calculation; second, about how the idea of justice itself may be 'reappropriated' by violence. (Derrida 1992: 28) He introduces the concept of 'politicization', as the ongoing negotiation between the impossibility and danger involved in aspirations for justice and the violence inherent in law. This means the constant questioning of how and where law is instituted and applied both at the macro level (eg. international law) and in more (apparently) 'secondary' or 'marginal' areas. This is in order to challenge the ways in which calls for justice are being 'posed and violently resolved, that is to say buried, dissimulated, repressed' in the grounding and extension of law – but also to distinguish between lesser and 'worst' calculability and calculation. (Derrida 1992:28; 1994:25-6) In listing some of the 'marginal' areas for the politicisation of law, Derrida refers to a range of different issues, from regulation of the teaching and practice of languages, to the military use of scientific research, abortion, euthanasia, bio-engineering and animal rights (Derrida 1992: 29). But it is clear that what is at stake for Derrida is not the positing of justice (non-violence) against law (violence) but something much more like an attempt to judge between lesser and 'worst' violences – since justice cannot escape from law. In an attempt to follow through this claim of the ineradicability of violence in the relation between justice and law, Derrida turns to Benjamin's essay 'Critique of Violence'.

As has been observed, Derrida's reading of Benjamin in 'Force of Law' is puzzling and contestable.¹⁰ In effect, he offers two readings of Benjamin's text. The first is a detailed commentary that involves a lot of direct quotation from the text and raises certain critical questions (Derrida 1992: 29-57). The second is highly speculative and polemical (Derrida 1992: 57-63). Given the care with which Derrida approaches texts, it is worth

looking carefully at this juxtaposition. In his first reading of Benjamin's text, Derrida is preoccupied by the ways in which Benjamin's binary oppositions, between law-making and law-preserving violence, and between mythic and divine violence, are unstable and tend to collapse into, contaminate, or be haunted by, one another (Derrida 1992: 44; 55).

Derrida points to the way that the relation between law-making and law-preserving violence in Benjamin's account is a self-destructive cycle, in which in order to conserve itself as law, law must perpetually repress the mythical, law constituting violence of its origins, and thus makes itself vulnerable to new law-making challenges. In this sense, the nature of law-making and law-preserving violence is indeterminate or undecidable, constantly open to change, decay and renewal. At the same time, Derrida points out how the identification of 'pure' or 'divine' violence is impossible to decide upon, given Benjamin's own acknowledgement that such violence is humanly unknowable, other than (indirectly) in retrospect (Derrida 1992: 55-6).

His first reading of Benjamin's text reaffirms the argument Derrida makes earlier in the essay in which the relations between law and justice, between law and violence, and between justice and violence is explored. For Derrida there is no pure 'outside' of law, whether understood as pure justice or pure violence, there is therefore no escape from law and the ways in which it is haunted by both justice and violence. This is something he takes to be demonstrated by Benjamin's own argument, but to be insufficiently acknowledged by Benjamin himself. Where Benjamin appears to keep Jew (divine violence) and Greek (mythical violence) distinct, in contrast

deconstructive discourses as they present themselves in their irreducible plurality participate in an impure, contaminating, negotiated, bastard and violent way in all these filiations – let's call them Judeo-Greek to save time – of decision and the undecideable' (Derrida 1992: 56).

Having said this, Derrida goes on to note that Benjamin himself just before the end of the text, refers to mythical violence as 'bastardized' divine violence, thus demonstrating again

how the terms that Benjamin introduces as separate become mutually contaminating.

(Benjamin 1978: 300)

Nevertheless, Derrida's first reading of Benjamin concludes by suggesting that Benjamin's final remarks in the text reinforce the idea of the separation of mythical and divine, law and justice in their unequivocal condemnation of the former and celebration of the latter. These final sentences of Benjamin's text set up Derrida's second reading of Benjamin, which rather than being a close textual analysis, presents itself as an attempt to interpret 'the problematic and interpretive space in which his discourse on the final solution might have been inscribed' (Derrida 1992: 58). Here Derrida works through a variety of responses to the holocaust that could follow from Benjamin's work. In doing so, he emphasises those aspects of Benjamin's argument that are anti-liberal, anti-humanist and anti-enlightenment. The reading culminates with the claim that the interpretive space opened up by Benjamin's text leaves open the temptation to 'think the holocaust as an uninterpretable manifestation of divine violence'. (Derrida 1992: 62)

In contrast to the earlier detailed textual analysis, it seems here that Derrida has moved far from Benjamin's writings, his political context and anti-fascist engagement. Derrida is serious in his interpretation. This is evidenced by the long footnote to the 'Force of Law' which comprised an introduction to the second part of the essay when it was delivered as a lecture. (Derrida 1992, editors note: 63-66) What can only be interpreted as the violence of Derrida's reading is clearly generated by two anxieties.¹¹ These are, first, the potentially crippling effects on political action of the recognition of the contamination of justice by violence; and second, the fear (he uses the word 'terrified') of how the idea of justice as the incalculable other may be reappropriated by the worst violence (represented here by the final solution). In his closing comments, Derrida remarks that Benjamin's

‘Critique of Violence’ ‘is still too Heideggerian, too messianico-marxist or archeo-eschatological for me’ (Derrida 1992: 62).

5. Conclusion

The burden of this paper is that Agamben and Derrida both consider seriously the question of the relationship between politics and violence and, in particular, have at the forefront of their thinking the question whether there can be politics that escapes, or overcomes, violence. In different ways they argue that non-violent politics is possible. However, this is an elusive, even a vanishing, possibility. They both see a deep connection between modern sovereign power, deterministic philosophies that posit an end to history (whether that is progressive or apocalyptic), and effectively inescapable violence. We here want to focus on some problems and difficulties that we identify in their respective positions. These issues connect to the questions of normativity, and of political resistance.

For Agamben, messianic time is counterposed to normativity, as well as to law. However, this counterposition is simultaneously problematised - because normativity itself depends on messianic power and its sheer openness. In *State of Exception*, Agamben examines the idea of the ‘dialectic’ between normative and non-normative tendencies within the history of the Western legal order. Here, though, it is the blurring of the boundaries between law-making and law-preserving violence that shapes our current fate. When these ‘coincide in a single person’, and are bound together in a state of exception, the ‘juridical-political system transforms itself into a killing machine’. (Agamben 2005a: 86)

At various points he suggests the possibility of challenges to this pessimistic scenario. In *Means Without End* he refers to the ways in which spectacular democracies also produce ‘singularities’, those subversive movements and events that form a messianic

interruption of state representation (2000: 114-116). But the arguments he makes for the normative power of the non-normative are always caught up in the same paradox. Either weak messianic power inaugurates a new regime of normativity, or it remains a 'weak' messianic capacity, impossible to predict or direct, and which perishes in its own accomplishment. (Agamben 2005a: 59).

The use of theological language by Agamben, and by Benjamin, undoubtedly has the effect of emphasising the absoluteness of the distinctions between 'politics as usual' which is irrevocably mired in the violence of law, and genuinely revolutionary politics, in which politics is both detached from the violence of the state, and from the subsumption of political action under means-end readings of history. The messianic 'other' of law-making and law-preserving violence does not depend on belief in any other worldly order. In spite of the theological terms in which both men write, for both the messianic moment is within history rather than beyond it. Nevertheless, this 'other' politics is described as 'pure' or 'divine' and is unrecognizable, because it cannot be framed within existing political terms. Agamben's analysis of modern sovereignty unequivocally identifies all politics and all violence with absolute domination, recalling Benjamin's account of mythical violence as 'bloody power over mere life for its own sake'. (Benjamin 1978:297). An alternative to this can only be invoked in the mode of impossibility. The non-normative normativity of weak messianic power will always be co-opted back into the violence dialectic of law. This account gives us no tools of discrimination: any differences between humanitarian and genocidal effort, between liberal and fascist states, between abortion laws and holocaust, are erased.

Derrida's engagement with Benjamin, by contrast, testifies to his concern about any possible erasure of differences between liberalism and fascism.¹² All politics is violent, on Derrida's account, but it is more or less violent to the extent that it avows or disavows its

own violence. If it avows violence, an internal connection is made between law and justice, and between calculable and the incalculable. In circumstances of disavowal, even where intentions are good, justice is subsumed under violence. Any articulation of a definite prescription of what ought to be invites the reappropriation of justice by violence.

Derrida does not infer from this any need to refuse the contaminations of politics. Nevertheless, for him the violence of law is not absolute. It depends on and incorporates the means of its own undoing in the form of our recognition of the paradoxical dependence on the reduction of singularity to particularity that makes it possible. Although acting on this recognition is always also to engage in violence once again, to the extent that this action is self-conscious about the ways in which it is implicated in the tertiary structure of violence then it can aspire to 'lesser' rather than 'worst' violence. When Derrida speaks of the necessity of political engagement in relation to law and regulation on topics from the teaching of languages to euthanasia, he is precisely calling for such engagement to be oriented towards lesser violence through an aspiration towards an unrealisable justice. Rather, it indicates the need to politicise, to call into question, all manifestations of sovereign power across all arenas of policy. In this respect, Derrida's analysis of the relationship between violence and politics opens up possibilities of discrimination that are absent from Agamben's.

Nevertheless, Derrida's argument still poses problems. In particular his highly formalised, abstract, conception of violence limits the capacity of his analysis to grapple with the 'worst' violence - identified in the 'Force of Law' with the 'bloodless' annihilation of millions in the gas chambers. In his tertiary structure of violence, attention is repeatedly drawn to the institution and maintenance of law (the first two levels). Very little attention is paid to practices of reflective violence, which are treated as conditioned by the first two levels. Whenever Derrida comes to address empirical instances of reflective violence, as

in the case of that accompanying revolutionary change, he always takes the analysis back to law, or to the level of 'originary' violence. Phenomenal violence, the violence that is part of diurnal politics, is treated as having no distinct presuppositions or implications, other than those inherent in the origin and perpetuation of the suppression of singularity. Normatively, phenomenal violence is given a lesser weight than the violences that underpin it.

This has two uncomfortable consequences. First, this normative marginalisation of phenomenal violence, cuts out one way that Derrida's distinction between worst and lesser violence might be made intelligible. Because he always returns to the formal description of what violence means, Derrida blocks avenues for discrimination between diverse legal and political arrangements. There is, after all, much more in the way of social, psychological, economic, legal and political presuppositions underpinning the possibility of the worst violence of the gas chambers than the simple disavowal of its own violence (no matter how important that disavowal turns out to be). Second and connected, violence as an institutionalised practice, a mode of being in the world, is ignored. As a mode of being, violence encompasses not only perpetrators and victims, but also a whole range of concrete social, political and psychological conditions of possibility.

In particular, the political theorists will wish to ask how we might conceptualise violence and politics in terms that neither affirm a necessary relationship between them, nor rely on the invocation of messianic time to break their relationship. Responses to this question will involve the examination of the historicity and embodiment of forms of violence and their political effects. The kind of scheme constructed by both Derrida and Agamben, in which politics is either all violence, or consists in the fleeting moments of messianic possibility, renders such key questions effectively unaskable.

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¹ Author refs 2007, 2008, 2009, 2010.

² 'Zur Kritik der Gewalt' *Archiv fur Sozialwissenschaften und Sozialpolitik* 47 (see Agamben 2005:52).

³ 'Completed in spring 1940, first published in *Neue Rundschau* 61, 3, 1950' (Editors note in *Illuminations* Hannah Arendt (ed) London, Pimlico, 1999 p.258).

⁴ .Note that *Il tempo che resta* (the original title of this work, subtitle *Un commento sulla Lettera ai Romani.*, published Torino, Bollati Boringhieri, 2000), might well be translated into English as 'remnant of time'.

⁵ Of course Benjamin is by no means the only source for Agamben's philosophical thought and the themes of state power, law, time and history, and genuine politics that we focus on in this paper also reflect engagement with Arendt, Foucault, Heidegger, Schmitt, Hegel, Primo Levi and numerous others. In emphasising the links between Benjamin and Agamben (and later Derrida) in this analysis we are engaging in a partial reading, but one that we consider is illuminating of Agamben's and Derrida's analyses of violence and politics, and one that by no means misrepresents Agamben's, and Derrida's, own concerns and understandings, for both of them directly engage with Benjamin and at length. In particular, both engage with the way themes in Benjamin's work either prefigure or seem to be the result of critical dialogue with themes from Carl Schmitt. On this specific matter see Agamben 2005:52-62, 1998:65-6; Derrida 1992:29-30, and the endnote at 63-66.

⁶ Indeed, Agamben suggests that Benjamin had Paul's argument in mind when he wrote the text - he identifies Paul as the 'theological dwarf under the table' in Benjamin's opening aphorism in *Theses on the Philosophy of History*. (Agamben 2005b:138; Benjamin 1999: Thesis I p.245).

⁷ Our analysis here is confined to Derrida's concept of the 'revenant' and its relation to Agamben's concept of the remnant. In another paper we explore other aspects of Derrida's analysis of politics and violence in greater detail: (Author ref forthcoming).

⁸ Cf in this connection the distinction between violence as 'force' and violence as 'violation' in Buffachi (2005, 2007).

⁹ We take the term 'tertiary structure of violence' from Beardsworth (1996), who analyses the three levels or forms of violence in Derrida (p.20); see also Corson 2001:870-872.

¹⁰ For example, see McCormick 2001a esp pp.396, 410, 414.

¹¹ cf McCormick 2001: 407 for an interpretation of the 'violence' of Derrida's treatment of Benjamin.

¹² For both Derrida and Agamben their reading of Benjamin's developing theory of modern state power is highly coloured by their concern about the relationship between Benjamin's ideas and those of Carl Schmitt (Schmitt 1985a, 1985b, 1986, 1996). Derrida comments on 'affinities' between Benjamin's and Schmitt's themes (Derrida 1992: 66n;) and on a letter from Schmitt to Benjamin (Derrida 1992: 31) (McCormick remarks that Derrida's text might lead us to believe that Schmitt and Benjamin 'had been faithful pen pals'. (MacCormick 2001a:410). Agamben spends several pages analysing the exact nature of Schmitt's response to Benjamin, and Benjamin's taking up (in *Theses on the Philosophy of History*) some of Schmitt's inferences. (Agamben 2005:52-64) He is concerned to turn round the scandalous idea that Benjamin was interested in Schmitt, by demonstrating Schmitt's interest in Benjamin. Agamben refers to Derrida's discernment of the 'dangerous equivocations' in Benjamin's text, acknowledging that the sketch of divine violence, which 'de-poses law', does indeed conduce to this reading; but he judges that Derrida's association of divine violence with the Nazi 'Final Solution' is a 'peculiar misunderstanding'.(Agamben 1998: 64).